

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 4th OF OCTOBER, 2023

MISC. PETITION No. 3208 of 2019

BETWEEN:-

**SADASHIV PUJARI S/O LATE SHRI
SIDDHESHWARI, AGED ABOUT 73 YEARS,
OCCUPATION: PUJARI AND
AGRICULTURIST MANAKCHOWK
BHERUGARH (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI A. S. GARG, SENIOR ADVOCATE ALONG WITH SHRI JITENDRA
SHUKLA, ADVOCATE)***

AND

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS RAVINDRA
CHATURVEDI (DECD.) THR. LRS CHETAN
1. S/O RAVINDRA AKVN QUARTER
AUDHYOGIK THANE KE PASS
MADHUMILAN CHOURAHA DEWAS
(MADHYA PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS RAVINDRA
CHATURVEDI (DECD.) THR. LRS SOM S/O
2. RAVINDRA AKVN QUARTER,
AUDHYOGIK THANE KE PASS
MADHUMILAN CHOURAHA (MADHYA
PRADESH)**

**3. ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS RAVINDRA
CHATURVEDI (DECD.) THR. LRS KU.
PRASHANTI D/O RAVINDRA AKVN**

**QUARTER, AUDHYOGIK THANE KE PASS
MADHUMILAN CHOURAHA (MADHYA
PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS SHRI OMPRAKASH
CHATURVEDI S/O LATE SHRI**

- 4. ANANDILALJI, AGED ABOUT 45 YEARS,
OCCUPATION: AGRICULTURE AND PUJA
MANAKCHOWK BHERUGARH (MADHYA
PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS ARUN CHATURVEDI
S/O LATE SHRI ANANDILAL JI, AGED**

- 5. ABOUT 43 YEARS, OCCUPATION:
SERVICE VIKRAM CEMENT FACTORU,
VIKRAM NAGAR, JAWAD DISTT.
MANDSAUR MANAKCHOWK,
BHERUGARH (MADHYA PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS SHRI
GHYANPRAKASH CHATURVEDI S/O**

- 6. LATE SHRI ANANDILALJI CHATURVEDI,
AGED ABOUT 38 YEARS, OCCUPATION:
SERVICE RAJARAMNAGAR (MADHYA
PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS RAJENDRA
CHATURVEDI S/O LATE SHRI**

- 7. ANANDILALJI, AGED ABOUT 30 YEARS,
OCCUPATION: AGRICULTURE AND PUJA
MANAKCHOWK, BHERUGARH
(MADHYA PRADESH)**

**ANANDILAL S/O LATE CHUNNILALJI
(DECD.) THR. LRS SMT. PRATIBHA W/O
SHRI KAILASHJI D/O LATE SHRI**

- 8. ANANDILAL JI RAIPUR SHASHKIYA
HOSPITAL SHASHKIYA MEDICAL
COLLEGE, EYE CENTRE
(CHHATTISGARH)**

- 9. SHYAMLAL S/O LATE SHRI
KUMDANLALJI, AGED ABOUT 65 YEARS,
OCCUPATION: AGRICULTURE AND PUJA
HANDICAPED AND AGED AND ILL
SIDDHAWAT MARG BHERUGARH UJJAIN,**

(DECEASED DELETED) (MADHYA PRADESH)

- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S DECD VIJAY KUMAR S/O LATE SHRI
10. SHIVCHARANLALJI THROUGH LR'S SMT. REKHA W/O LATE VIJAY KUMAR 94, SHYAM NAGAR ANNEX (MADHYA PRADESH)
- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S DECD VIJAY KUMAR S/O LATE SHRI
11. SHIVCHARANLALJI THROUGH LR'S PIYUSH S/O LATE VIJAY KUMAR 94, SHYAMNAGAR ANNEX (MADHYA PRADESH)
- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S DECD VIJAY KUMAR S/O LATE SHRI
12. SHIVCHARANLALJI THROUGH LR'S HEMANT S/O LATE VIJAY KUMAR CHATURVEDI 94, SHYAMNAGAR, ANNEX (MADHYA PRADESH)
- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S
13. SATISHCHANDRA S/O LATE SHRI SHIVCHARANLALJI 41, MANAKCHOWK BHERUGARH (MADHYA PRADESH)
- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S SMT. KUMUD CHATURVEDI W/O LATE
14. VIRENDRA SHIVCHARAN LALJI CHATURVEDI 153-B BRIJESHWARI ANNEX (MADHYA PRADESH)
- DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S VIVEK
15. CHATURVEDI S/O LATE VIRENDRA CHATURVEDI 153-B BRIJESHWARI ANNEX (MADHYA PRADESH)
16. DECD SHIVCHARAN S/O SHRI MUNNALALJI THROUGH LR'S VINAY CHATURVEDI S/O LATE SHRI VIRENDRA CHATURVEDI BL-3, KACHNAR

APARTMENT CITY CENTER GREEN GARDEN (MADHYA PRADESH)

17. GOPAL KRISHNA CHATURVEDI S/O LATE SHRI NARAYANLALJI, AGED ABOUT 40 YEARS, OCCUPATION: PUJARI AND AGRICULTURE MANAKCHOWK, BHERUGARH (MADHYA PRADESH)

18. BALKRISHNA CHATURVEDI S/O LATE SHRI SUNDARLALJI CHATURVEDI, AGED ABOUT 40 YEARS, OCCUPATION: SERVICE, M.P. RAJYA PARIWAHAN NIGAM (MADHYA PRADESH)

19. UPENDRA KUMAR CHATURVEDI S/O LATE SHRI SUNDARLAL, AGED ABOUT 29 YEARS, OCCUPATION: SERVICE CO OPERATIVE PRINTING PRESS, NAI SADAK UJJAIN, URDUPURA (MADHYA PRADESH)

20. RAJESH KUMAR CHATURVEDI S/O LATE SHRI SUNDARLAL JI, AGED ABOUT 21 YEARS, OCCUPATION: PUNJABI GIRLS AND AGRICULTURE MANAKCHOWK BHERUGARH (MADHYA PRADESH)

21. DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S DECD VIRATKANT S/O LATE LAXMIDUTT CHATURVEDI THROUGH LR'S (A) SMT. SHYAMABAI W/O VIRATKANT CHATURVEDI, AGED ABOUT 60 YEARS, EWS 236/436, LIG. INDIRANAGAR (MADHYA PRADESH)

22. DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S DECD VIRATKANT S/O LATE LAXMIDUTT CHATURVEDI THROUGH LR'S (B) PRAVEEN CHATURVEDI S/O LATE VIRATKANT CHATURVEDI, AGED ABOUT 38 YEARS, EWS 236/436, LIG INDIRANAGAR (MADHYA PRADESH)

23. DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S DECD VIRATKANT S/O LATE LAXMIDUTT CHATURVEDI THROUGH LR'S ANTIM

(KAMAL) CHATURVEDI S/O LATE VIRATKANT CHATURVEDI, AGED ABOUT 35 YEARS, EWS 236/436, LIG. INDIRANAGAR (MADHYA PRADESH)

DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S DECD VIRATKANT S/O LATE LAXMIDUTT CHATURVEDI THROUGH LR'S SMT.

24. HEMANT DEVI @ HEMA D/O LATE VIRATKANT CHATURVEDI W/O MAHESHKANT SHUKLA, AGED ABOUT 32 YEARS, EWS 236/436 LIG INDIRANAGAR (MADHYA PRADESH)

DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S PRATIBHADITYA S/O LATE LAXMIDUTT CHATURVEDI (DIED) THROUGH LRS.

25. AISHWARYA DUTT S/O SHRI PRATIBHADITYA CHATURVEDI, AGED ABOUT 31 YEARS, OCCUPATION: AGRICULTURE AND PUJA ARCHANA 165, M.I.G., INDIRA NAGAR, UJJAIN (MADHYA PRADESH)

DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S NISHIDH S/O LATE LAXMIDUTT CHATURVEDI MANAKNAGAR BHERUGARH (MADHYA PRADESH)

27. KOTILYA S/O LATE KRITARGH CHATURVEDI 90, QUARTER INDIRANAGAR (MADHYA PRADESH)

DECD LAXMIDUTT CHATURVEDI S/O LATE SHRI BIHARILAL THROUGH LR'S PAWAN S/O LATE KRITARTH CHATURVEDI 90, QUARTER INDIRANAGAR (MADHYA PRADESH)

29. STATE OF M.P. THROUGH COLLECTOR UJJAIN MUKAM KOTHI PALACE UJJAIN (MADHYA PRADESH)

30. COMMISSIONER UJJAIN DIVISION UJJAIN, MUKAM KOTHI PALADE

(MADHYA PRADESH)

COLLECTOR / DISTRICT MAGISTRATE

31. UJJAIN DISTT UJJAAN MUKAM KOTHI PALACE (MADHYA PRADESH)
- SUB DIVISIONAL OFFICER UJJIAN
32. MUKAM KOTHI UJJAIN (MADHYA PRADESH)
33. TEHSILDAR PARGANA, UJJAIN MUKAM KOTHI PALACE (MADHYA PRADESH)
- BHERU SHANKAR PUJARI S/O SHRI NIWAS CHATURVEDI BRAMHAN, AGED
34. ABOUT 55 YEARS, OCCUPATION: PUJARI AND AGRICULTURE MANAKCHOWK, BHERUGARH (MADHYA PRADESH)
- BHERUSHANKAR PUJARI @
- BHERAVSHANKAR PUJARI S/O SHRI NIWAS CHATURVEDI THROUGH LRS. SUDHIR CHATURVEDI S/O SHRI
35. BHERAVSHANKAR CHATURVEDI, AGED ABOUT 58 YEARS, OCCUPATION: SERVICE AND PUJA ARCHANA MANAKCHOWK BHERUGARH (MADHYA PRADESH)
- BHERUSHANKAR PUJARI @
- BHERAVSHANKAR PUJARI S/O SHRI NIWAS CHATURVEDI THROUGH LRS. SURENDRA CHATURVEDI S/O SHRI
36. BHERAVSHANKAR CHATURVEDI, AGED ABOUT 55 YEARS, OCCUPATION: ADVOCATE AND PUJA ARCHANA MANAK CHOWK, BHERAVGARH, UJJAIN (MADHYA PRADESH)
- BHERUSHANKAR PUJARI @
- BHERAVSHANKAR PUJARI S/O SHRI NIWAS CHATURVEDI THROUGH LRS. SANJAY CHATURVEDI S/O SHRI
37. BHERAVSHANKAR CHATURVEDI, AGED ABOUT 52 YEARS, OCCUPATION: SERVICE AND PUJA ARCHANA MANAK CHOWK, BERAVGARH, UJJAIN (MADHYA PRADESH)
38. BHERUSHANKAR PUJARI @
- BHERAVSHANKAR PUJARI S/O SHRI NIWAS CHATURVEDI THROUGH LRS. SMT. SAROJ PANDEY W/O SHRI ASHOK PANDEY,

AGED ABOUT 62 YEARS, OCCUPATION:
HOUSEHOLD WORK ANAND VIHAR,
SCHEME NO. 125, INDORE (MADHYA
PRADESH)

39. GOPAL PUJARI S/O SHRI SIDDHESHWARJI,
AGED ABOUT 45 YEARS, OCCUPATION:
PUJARI AND AGRICULTURE
MANAKCHOWK, BHERUGAR UJJAIN
(MADHYA PRADESH)

40. DECD LAXMIDUTT CHATURVEDI S/O
LATE SHRI BIHARILAL THROUGH LR'S
PRATIBHADITYA S/O LATE LAXMIDUTT
CHATURVEDI (DIED) THROUGH LRS. SMT.
YASHODADEV I W/O SHRI PRATIBHADITYA
CHATURVEDI, AGED ABOUT 64 YEARS,
OCCUPATION: HOUSEHOLD WORK 165,
M.I.G., INDIRA NAGAR, UJJAIN (MADHYA
PRADESH)

.....RESPONDENTS

*(SHRI KRISHNA SHASTRI, ADVOCATE FOR RESPONDENT NO.1(2) ,1(5)
AND [R-4].*

SHRI S.N.VYAS, ADVOCATE FOR RESPONDENT NO.14 AND 15.

*SHRI SITA RAM MADROSIYA, ADVOCATE FOR RESPONDENT
NO.21,22,23,24 &26.*

*SHRI BHERU LAL BAKLIYA, ADVOCATE FOR LEGAL REPRESENTATIVE
OF RESPONDENT NO.8.*

*This petition coming on for order this day, the court passed the
following:*

ORDER

1] This miscellaneous petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India against the order dated 22/4/2019, passed by District Judge, Ujjain; whereby, an application filed under Section 151 of the Code of Civil Procedure 1908 (hereinafter to be referred to as "CPC") by the plaintiff/petitioner has been rejected, and another application, for

correction of date of death of plaintiff's father- Siddheshwar has also been rejected.

2] In brief, facts of the case are that the petitioner/plaintiff has filed a suit for declaration and permanent injunction in respect of performing *Puja Archana* in the *Kal Bahirav Temple* and *Siddhawati and Siddheshwar Mahadev Temple Ujjain*, against the defendants no.1 to 7 and 9 to 13. Further declaration was sought that defendant no.8 Late Laxmidutt Chaturvedi had no right to get his name mutated nor he has any right to receive the offerings.

3] The suit is at the stage of recording evidence, and an application under Order 18 Rule 17 read with Section 151 of the CPC (Annexure P-4) was filed by plaintiff/petitioner Sadashiv Chaturvedi praying for correction of a mistake, that his father's date of death has been wrongly recorded as 30.08.1954, in place of 03.08.1954 during his cross examination but only subsequently the same came to his knowledge. This application has been rejected vide the order dated 22/4/2019.

4] So far as the rejection of the application under Order 18 Rule 17 read with Section 151 of the CPC is concerned, counsel for the petitioner seeks for withdrawal of the aforesaid relief with liberty to file appropriate application if the occasion so arises.

5] Prayer appears reasonable. The petitioner/plaintiff is allowed to withdraw the aforesaid relief with the liberty as aforesaid.

6] So far as the issue regarding allowing the defendant no.8(1)(b) for cross examination is concerned, counsel for the petitioner/plaintiff has submitted that the learned judge of the trial Court has erred in allowing the said defendant to lead his evidence despite the fact that the defendant no.8(1)(b) happens to be son of Viratkant, who has already passed away, and Viratkant happens to be son of Laxmidutt Chaturvedi, who happens to be original defendant no.8, who had already given up his right to produce any evidence vide order dated 15.05.2017 (page 46-47). Thus, it is submitted that once the original defendant has refused to lead any evidence, no further evidence can be led by the legal representatives of the deceased/defendant.

7] In support of his submission, Shri Garg, learned senior counsel for the petitioner/plaintiff has placed reliance on the decision in the case **Nagaji Vs. Ganji reported as [1981] II Weekly Notes (241)**. Reliance has also been placed on the decision rendered by the Hon'ble Supreme Court in the case of **Gajraj Vs. Sudha and others reported as (1999) 3 SCC 109**.

8] Counsel for the petitioner/plaintiff has also relied upon another decision of the coordinate Bench of this Court in the case of **Devendra Kumar Jain Vs. Manoharlal S/o Indermlji Jain reported as 2007(4) MPLJ 101** in which the Court has held that only the Court has power to permit any witness to be recalled, and the party cannot seek permission to recall the witness. It is further

submitted that the defendant no.8(1)(b) had simply filed an affidavit under Order 18 Rule 4 of the CPC which has been taken on record, and he is allowed to be cross- examined which is not impermissible in law.

9] Shri Shashtri, learned counsel for respondent no.1(2),1(5) and 4 has also supported the petition, and it is submitted that the order passed by the trial court in allowing the aforesaid defendant to file his affidavit under Order 18 Rule of the CPC is contrary to law as has relied upon the decision in the case of **Suraj Pal vs Sudha and others (supra)**.

10] On the other hand, the aforesaid prayer is opposed by the counsel for the respondents, and counsel appearing for respondent/defendant no.8(1)(b), has submitted that no interference is made out as even according to Order 22 Rule 4(2) of the CPC which provides that any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. Thus, it is submitted that if defendant no.8(1) (b) being legal representatives of original the defendant, can take any plea in support his submission in accordance with law. Thus, it is submitted that no case for interference is called for, and the miscellaneous petition is liable to be dismissed.

11] So far as the scope of Order 22 of the CPC is concerned, the Hon'ble Supreme Court in the case of **Gajraj (supra)** has held as under:

“

5. After perusing the orders of the trial Court and of the High Court, we are of the view that on the facts of this case, the High Court was not right in observing that the proposed legal representatives can take up all other defences arising from their individual rights. The reason is that the respondents on more than one occasion moved applications under Order 1, Rule 10, C.P.C. raising contention to agitate their individual rights and those applications were dismissed. The trial Court observed thus :

The scope of an enquiry under Section 22, Rule 5 of the C.P.C. is very limited. Moreover, this is a suit between landlord and tenant. The plea taken by the proposed LR's is inconsistent with the plea taken by the deceased Vasant Rao. They must proceed with the litigation from the stage where the death of Defendant 1 had taken place. They are bound by the pleadings of their predecessor in whose place they are to be substituted. A legal representative substituted cannot set up a new or individual right. He cannot take up a new and inconsistent plea contrary to the one taken up by the deceased. The proposed LR's stand in the shoes of the deceased defendant and must accept their position adopted by their predecessor. Besides this, the plea of right in the property by birth in the ancestral property and the male representative are the coparceners was taken by the proposed LR's by moving applications Exhs. 114, 119 and 174 under Order 1, Rule 10, C.P.C. The applications Exhs. 114 and 119 were rejected by my learned predecessor by passing a common order dated 13.2.1992 and Exh. 174 was rejected on 8.3.1994 by my learned predecessor. The said orders were unsuccessfully challenged by the proposed LR's before the Hon'ble High Court in civil revision and thereafter review petition. Thus, the said issue has now become final and cannot be re-agitated by the present LR's.

6. In view of the findings recorded by the trial Court that the legal representatives on earlier occasions moved the Court under Order 1, Rule 10 but failed, the order of the High Court cannot be sustained and, therefore, is set aside and the order of the trial Court is restored. The appeal is allowed.”

(emphasis supplied)

12] It is apparent from the aforesaid decision, that the defendant/legal representatives cannot set up a defence other than the defence already set up by his predecessor as the legal representatives would enter into the shoe of deceased/defendant, and if the deceased/defendant has already consciously admitted in the Court that he does not wish to lead any evidence, and even the written statement was not filed by him, it means that the original defendant was of the opinion, that he does not want to contest the matter or that he has no defence, and in such circumstances, his legal representatives cannot be allowed to lead additional evidence.

13] So far as the reliance placed to sub rule (2) of Rule 4 of Order 22 of the CPC by the counsel for the respondents is concerned, this Court is of the considered opinion that scope of said rule is very limited only to the defence appropriate to the character of the legal representatives of the deceased/defendant, and he cannot take up a stand different than the deceased/defendant.

14] It is also found that the defendant no.8 has also not filed any written statement, and in such circumstances, his legal representative cannot also be allowed to lead his own evidence as

also held by this Court in the case of **Suraj Pal Vs. Mandir Mahadeoji reported as 2000 (II) MPWN 142.**

15] In view of the same, this Court is of the considered opinion, that the learned judge of the trial Court ought to have not taken the affidavit under Order 18 Rule 4 of the CPC filed by the respondent/defendant no.8(1) (b) on record, and thus, accordingly, the impugned order dated 22/4/2019, passed by District Judge, Ujjain is hereby set aside. The learned judge of the trial Court is requested to proceed further in accordance with law.

16] Accordingly, **the miscellaneous petition stands disposed of.**

Sd/-

(SUBODH ABHYANKAR)
JUDGE

das/(krjoshi)